

FILED
DISTRICT COURT OF GUAM

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JEANNE G. QUINATA
CLERK OF COURT

LUJAN & WOLFF LLP
Attorneys at Law
DNA Building, Suite 300
238 Archbishop Flores Street
Hagåtña, Guam 96910
Telephone (671) 477-8064/5
Facsimile (671) 477-5297

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT OF GUAM
FOR THE TERRITORY OF GUAM**

JON P. FERNANDEZ,

Plaintiff,

-vs-

GUAM EDUCATION BOARD,
LOURDES B. SAN NICOLAS,
individually and as the chairperson and a
member of the Guam Education Board,
ROSIE R. TAINATONGO, individually
and as the vice chairperson and a member of
the Guam Education Board, KENNETH P.
CHARGUALAF, individually and as a
member of the Guam Education Board,
JOSE Q. CRUZ, individually and as a
member of the Guam Education Board,
RYAN F. TORRES, individually and as a
member of the Guam Education Board,
CHARLENE D. CONCEPCION,
individually and as a member of the Guam
Education Board,

Defendants.

CIVIL ACTION NO. **16-00080**

**EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER**

COMES NOW Plaintiff Jon P. Fernandez ("Plaintiff") and hereby requests an *ex parte* order enjoining and restraining Defendants Guam Education Board ("the Board"), Lourdes B. San Nicolas, Rosie R. Tainatongo, Kenneth P. Chargualaf, and Jose Q. Cruz, Ryan F. Torres, and Charlene D. Concepcion (collectively "Defendants") from holding the Board meeting or hearing scheduled for November 21, 2016, and from taking any action in furtherance of its termination of

ORIGINAL

1 Plaintiff as Superintendent of the Guam Department of Education. This Ex Parte Application is
2 based on the verified Complaint, filed herewith.

3 **I. ARGUMENT**

4 Federal Rule of Civil Procedure 65(b) authorizes the issuance of a temporary restraining
5 order, providing in part:
6

7 (b) Temporary Restraining Order.

8 (1) Issuing Without Notice. The court may issue a temporary restraining
9 order without written or oral notice to the adverse party or its attorney only if:

10 (A) specific facts in an affidavit or a verified complaint clearly
11 show that immediate and irreparable injury, loss, or damage will result to
12 the movant before the adverse party can be heard in opposition; and

13 (B) the movant's attorney certified in writing any efforts made to
14 give notice and the reasons why it should not be required.

15 FRCP 65(b)(1). In the context where notice has been given to the opposing party on the
16 application for a restraining order, the procedure that is followed does not differ functionally from
17 that on an application for a preliminary injunction and the proceeding is not subject to any special
18 requirement. 11A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure, § 2951
19 at 254 (citing Dilworth v. Riner, 343 F. 2d 226 (9th Cir. 1965)).

20 In this case, specific facts in the verified Complaint clearly show that immediate and
21 irreparable injury, loss, or damage will result to Plaintiff before all seven (7) Defendants can be
22 heard in opposition to the ex parte application. There is insufficient time to provide notice of this
23 Application to all Defendants. Plaintiff will suffer immediate and irreparable harm if Defendants
24 are not immediately enjoined from holding the Board meeting or hearing scheduled for November
25 21, 2016, which is three (3) days (or one business day) away, and from proceeding in furtherance
26 of Plaintiff's termination as Superintendent. The hearing was set unilaterally by the Board in
27 order for Plaintiff to address the "Bill of Particulars," an invalid document which was not
28 approved by the Board and which contains allegations of moral turpitude by Plaintiff. Although
Plaintiff is expected by the Board to defend himself, the Board has stated that public participation

1 is not permitted and that there will be no second vote on the issue of Plaintiff's employment.
2 Thus, the Board intends to hold a hearing in which charges of moral turpitude are fully aired to
3 the public with no benefit or remedy to Plaintiff in the form of the Board voting whether to
4 reinstate Plaintiff as Superintendent.

5 Plaintiff will likely succeed on the merits of the underlying Complaint as he clearly has a
6 property right in his employment by Guam law and contract and the Board has denied him of this
7 property right without due process of law. Further, the Board has deprived Plaintiff of liberty
8 without due process of law, as he has been terminated on charges of moral turpitude which have
9 been communicated to the public, and which the Board intends to have further aired at the open
10 public hearing on November 21, 2016. The Board has also breached the Employment Agreement
11 with Plaintiff by terminating him before a full investigation and before an open and public
12 hearing could be had.


13 **III. CONCLUSION**

14 For the foregoing reasons, Plaintiff respectfully requests that this Court grant its
15 application and issue a temporary restraining order in the form proposed herewith.

16 **RESPECTFULLY SUBMITTED** this 18th day of November, 2016.

17 **LUJAN & WOLFF LLP**

18 By:

19 
20 **DAVID J. LUJAN**
21 *Attorneys for Plaintiff*